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1 August 2011 – 31 July 2014 Revised

WITHDRAWN

May 2012

Of interest to Providers; Local Authorities and Colleges who have funding from the Skills Funding Agency



European Union
European Social Fund
Investing in jobs and skills

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Funding Appendix

WITHDRAWN

Conditions of Funding (Grant)

1 Introduction

- 1.1 This Agreement is made between the Chief Executive of Skills Funding (the Chief Executive) and [***Name of the body***] the Body regarding the amount of funding to be paid to the Body for Learning Provision (Provision) for the periods as set out in Appendix 1.
- 1.2 The funding allocation(s) by the Chief Executive is made subject to the conditions set out in this Agreement and any documents referred to herein.

2 Funding and Payment

- 2.1 The breakdown of funds which the Chief Executive agrees to pay to the Body is set out in Appendix 1 of this Agreement.

3 Conditions of Funding

- 3.1 The detailed requirements in respect of each learning programme are set out in the Chief Executive's Funding Rules 2012/13 as amended and updated from time to time and which form part of the terms and conditions of this Agreement.
- 3.2 The maximum value of the Adult Skills Budget or for Learning Provision excluded from this budget, as shown in Appendix 1 and Appendix 2 may not be exceeded for any reason, except by an agreed variation in writing to this Agreement. The Chief Executive will not be liable to make any payment in excess of the maximum values set out above or as varied in writing. Where the term of this Agreement is longer than one year, funding for subsequent years is subject to funds being made available to the Chief Executive. For Learning Provision that are excluded from the Adult Skills Budget, the Body is not permitted to vire funding between programmes except by way of an agreed variation in writing to this Agreement.
- 3.3 For the avoidance of doubt the overall maximum values for each learning programme at Appendix 1 takes precedence over delivery volumes (if any) in Appendix 2. Where the Body considers that the combination of funding rates, as published on the Learning Aims Reference Application (LARA) and volumes would result in the overall maximum value being exceeded, the Body must notify the Chief Executive and the parties will either agree a variation to the volumes, funding rates or to the maximum value for the learning programme to ensure the Body remains within the agreed maximum value.

- 3.4 The Provision is to be delivered in accordance with any specific requirements of the Chief Executive and delivery profiles and any tender document submitted by the Body which all form part of this Agreement.
- 3.5 With the exception of ESF funded provision, the Chief Executive will restrict delivery of Provision under this Agreement against the funding available up to the 31 March 2013 as detailed in Appendix 1. Where the delivery within this financial year fails to meet the minimum levels of performance or where the delivery in this period would result in the overall maximum value being exceeded, the Chief Executive reserves the right at its absolute discretion to vary the terms of this Agreement accordingly.
- 3.6 The Chief Executive reserves the right to give the Body three months notice to reduce the overall maximum value for any learning programme without the need to give a reason.

4 Sub Contracted Provision.

- 4.1 Where the Body sub-contracts or intends to sub-contract any duties or obligations arising out of this Agreement the Body must provide the Chief Executive with details of all sub-contractors bi-annually by fully and accurately completing the Declaration of Subcontractors form in accordance with the deadline set out in the Funding Rules. If the Body is not sub-contracting then a nil return must be received by the deadline date. The Body must notify the Chief Executive of any within year changes to its sub-contractors. The Chief Executive reserves the right to require the Body not to enter into or to terminate any sub-contract to deliver the Provision under this Agreement.
- 4.2 The Body must comply with the requirements on sub-contracting delivery of the Provision set out in the Chief Executive's Funding Rules as amended and updated. Sub-contracting any part of the delivery of the Provision shall not relieve the Body of any obligation or duty attributable to him under the Agreement.
- 4.3 The delivery of the Provision under this Agreement may only be sub-contracted to one level.
- 4.4 Where the Body has sub-contracted any duties or obligations arising out of this Agreement, the Body shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to the Chief Executive if requested in writing to do so. Where the Body enters into a sub-contract for the purpose of delivering the Provision, the Body shall ensure that the sub-contract includes any terms specified in the Funding Rules.

- 4.5 The Body shall ensure that any sub-contract entered into for the purpose of delivering the Provision under this Agreement contains a term providing that the Chief Executive has the right to enforce the terms of the sub-contract.
- 4.6 In performing its obligations under this Agreement the Body shall ensure that the awarding of sub-contracts is based on fair and open competition.
- 4.7 The Body must seek the approval of the Chief Executive where it has not previously used sub-contractors and wishes to do so. This approval must be sought before awarding any services under this contract to a sub-contractor that is new to the Body.
- 4.8 The Body may not assign any duties or obligations under this Agreement without the consent of the Chief Executive.
- 4.9 The Body must notify the Chief Executive if there is a change in its name and/or ownership. The Chief Executive reserves the right to terminate the Agreement if they consider in their absolute discretion that the change in ownership would prejudice the Body's ability to deliver the Provision.

5 Specific Learner Incident Reporting Requirements

- 5.1 The Body shall inform the Chief Executive of the death of any Learner which is as a result of work undertaken whilst in employment and who is undertaking a related Learning Programme.

This shall be done by:

- 5.1.1 informing the Chief Executive's representative by telephone or email immediately The Body becomes aware of the event;
- 5.2 The Body shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The Body shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 5.3 The Body shall also monitor, and act on, any other harm to learners to the extent that the Body could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.

5.4 The Body shall co-operate with Chief Executive's representatives and Department for Work and Pensions (DWP) for the purposes of the Analogous Industrial Injuries Scheme in respect to those learners to which it applies.

6 Learner Health, Safety and Welfare

6.1 The Body shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of learners. The Body shall provide information to the Chief Executive, as and when specifically requested, to give assurance that adequate arrangements exist for learner health safety and welfare.

6.2 Where part of the learning takes place in an environment outside the direct control of the Body, the Body shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of learners.

6.3 The Body shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected. The Body will take all necessary actions to comply with current legal safeguarding requirements. The Body must make the necessary checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable learners is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education and the Department of Health. Information should also be sought from the Independent Safeguarding Authority (ISA) Vetting and Barring Scheme. The Body must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with learners under 18 or other vulnerable learners.

6.4 The Body will carry out criminal records bureau checks on all overseas applicants for employment and seek additional information about an applicant's conduct. The Body must review its records and be able to demonstrate it has robust record-keeping procedures in relation to the checks it has undertaken and the staff it employs.

6.5 In working with other organisations/bodies, the Body shall make arrangements to co-ordinate and co-operate effectively for reasons of learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.

6.6 The Body shall, in circumstances where it sub-contracts the management and/or delivery of the services under this Agreement,

ensure that all the clauses in respect of specific learner incident reporting requirements and learner health safety and welfare are included in its contract with sub-contractors.

7 Disposal of Assets and Change of Use

- 7.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.
- 7.2 For the purposes of this section:
- (a) 'Asset' shall mean any property, real or personal, tangible or intangible;
 - (b) an Asset shall be considered to have been financed by the Chief Executive if it has been acquired wholly or partly with funds provided by the Chief Executive ;
 - (c) the use of any Asset shall be considered to have changed if the Body uses it for any purpose other than for the Provision or connected with the Provision of services under the Agreement;
 - (d) 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by the Chief Executive of the Skills Funding to acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.
- 7.3 The Body shall ensure that any Asset financed by the Chief Executive is adequately insured.
- 7.4 The Body shall inform the Chief Executive if it proposes to dispose of, or change the use of, any Asset that has been financed by the Chief Executive of Skills Funding.
- 7.5 The Body shall not dispose of any Asset financed by monies provided by the Chief Executive unless it has first obtained the written consent of the Chief Executive to such a disposal.
- 7.6 Where the Body disposes of the Asset it shall pay the Chief Executive whichever is the greater, either the amount of funding provided by the Chief Executive in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to the Chief Executive unless otherwise agreed with them.

- 7.7 If the Body changes the use of any such Asset it will be treated as a disposal and the Body shall make a payment to the Chief Executive in accordance with Clause 7.6 above.
- 7.8 In the event of the Body being taken over, merging or going into liquidation, all Assets financed by the Chief Executive, or the equivalent portion of their market value, will become the property of the Chief Executive.
- 7.9 The provisions of this clause shall apply during the term of this Agreement and after its termination howsoever arising. The Chief Executive reserves the right to decide when interest in Assets financed by the Chief Executive under the terms of this Agreement shall cease.

8 Equal Opportunities

- 8.1 The Body shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. The Body shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of The Body and all sub-contractors employed in the execution of the Agreement. The Body will comply with the detailed requirements in relation to equality of opportunity set out in clauses 8.2 to 8.4.
- 8.2 The Body will, in delivering the Provision under this Agreement, demonstrate that it has had regard to the duties placed on the Chief Executive by relevant equality legislation. The delivery of the Provision should comply with the principles set out in the Chief Executive's Single Equality Scheme. The Body will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Body and all sub-contractors employed to deliver the Provision.
- 8.3 The Body shall ensure that equality of opportunity is built into all aspects of the Provision; the business planning process; and the self assessment process. The Body shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Body shall use appropriate, specific and measurable improvement measures. These will be proportionate, relevant and aligned to the provision the Body is funded to deliver.
- 8.4 The Chief Executive shall use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection grades for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of learners.

9 Raising Standards

- 9.1 The Body shall deliver the Provision to an acceptable standard of quality by using all reasonable endeavours:
- 9.1.1 to minimise drop out rates, deliver high completion, achievement and success rates and appropriate progression;
 - 9.1.2 to at least meet the minimum quality standards that apply to the Learning Programmes delivered. These minimum quality standards and other types of underperformance will be set out by the Chief Executive;
 - 9.1.3 to ensure competent and appropriately qualified staff deliver and assess learning. The Body shall be responsible for the professional development and training of its staff and for meeting any minimum requirements which may be required by OFSTED or other regulatory authority.
 - 9.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 9.1.5 to provide a safe, healthy and supportive environment, which meets the needs of learners;
 - 9.1.6 to provide good management and leadership of the learning process;
 - 9.1.7 to deliver value for money and financial regularity and probity; and
 - 9.1.8 to ensure any sub-contractors delivering the Provision comply with the requirements set out in clauses 9.1.1 to 9.1.7 above.
- 9.2 The Body must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at:
<http://fepi.skillsfundingagency.bis.gov.uk/>
and in any subsequent updates to these web pages.
- 9.3 Where appropriate the Body shall confirm in writing to the Chief Executive that it has formal approval from relevant awarding bodies to deliver the qualifications, which form part of the Provision.
- 9.4 When the Body receives notification from OFSTED that the Provision (including leadership and management) is to be inspected, the Body shall provide the Chief Executive with a copy of its quality improvement

activity, and any other relevant information in accordance with the required timescale of OFSTED.

- 9.5 The Chief Executive will issue the Body with a Notice of Concerns in the following circumstances:
- 9.5.1 The Body receives an inadequate OFSTED inspection rating (including leadership and management)
 - 9.5.2 All or any part of the Provision delivered under this part of the Financial Memorandum falls below the minimum quality standards or other standards which may be set by the Chief Executive.
 - 9.5.3 The Body is rated inadequate by the Chief Executive for financial health or financial control.
- 9.6 The Notice of Concerns will set out the reasons for the issue of the Notice of Concerns and the actions the Chief Executive requires the Body to take to address the concerns together with the timescales within which that action must be taken. The Notice of Concern may include additional conditions of funding.
- 9.7 The Chief Executive will notify Learning and Skills Improvement Service (LSIS) that a Notice of Concern has been issued and LSIS will provide support to the Body to enable it to comply with the Notice of Concern.
- 9.8 The Notice of Concern and any additional funding conditions will be lifted once the Body has taken the required action to address the concerns within the timescales set out.
- 9.9 If the Body fails to take the actions set out in the Notice of Concern within the timescales set out, the Chief Executive will issue a Notice of Withdrawal of Funding. The Notice of Withdrawal of Funding will require the Body to carry out a fundamental review of its structures, leadership and operations to address the concerns set out in the Notice of Concerns. The Body will have the option of support from LSIS in carrying out this review.
- 9.10 Where the Body develops a robust plan that has the support of stakeholders and has been subject to a transparent and, if appropriate, competitive process, the Chief Executive will lift the Notice of Withdrawal of Funding. The Notice of Concern will remain in place until the plan has been implemented.
- 9.11 In the event that the Body fails to comply with the Notice of Withdrawal of Funding, the Chief Executive will issue a Confirmation of Withdrawal of Funding.

- 9.12 Once a Confirmation of Withdrawal of Funding has been issued the Body will be removed from the Register of Training Organisations and the Chief Executive will secure another training provider to deliver the Provision.
- 9.13 The Body shall for those staff delivering the services be responsible for their professional development and training and meeting any legal requirements to ensure that they are appropriately qualified and trained. The Body will ensure that its staff are trained in accordance with the Further Education Teachers Qualification (England) Regulations 2007 and the Further Education Teachers Continuing Professional and Registration (England) Regulations 2007 and LLUK Standards.

10 European Funding and Other Sources of Funding

- 10.1 Where notified in writing by the Chief Executive that the funding under this Agreement is required to be used as match funding:
- 10.1.1 The Body must not use the funding paid under this Agreement to support bids or claims that will be used to secure funding from any European source, either on its own behalf or on behalf of the Chief Executive, including but not limited to as match funding, without obtaining consent in writing from the Chief Executive, that it may do so (such consent not to be unreasonably withheld).
- 10.1.2 Where the Body or any of its sub-contractors has access to other funding streams, the Body or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (at the sole discretion of the Chief Executive or any other body undertaking the audit or monitoring), to the Chief Executive and anybody acting on their behalf that no double funding has occurred in respect of the Provision delivered under the Agreement.
- 10.1.3 Where the Chief Executive identifies double funding in respect of the provision, or any part thereof, the Body will be liable to repay to the Chief Executive any sums paid, or part thereof, by the Chief Executive in respect of the Provision for which the Body has received funding from another source and the Chief Executive reserves the right to deduct such sums from any monies owed to the Body under the Agreement or any subsequent agreement.
- 10.1.4 The Chief Executive reserves the right to use payments made under the Agreement as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by the Chief Executive, the Body shall provide such information and in the form as the Chief Executive specifies to enable the Chief Executive to comply with the requirements of the European Social Fund.

- 10.1.5 The Body shall if requested to do so by the Chief Executive inform learners or others that the Provision delivered has been financed in whole or part by the European Social Fund.
- 10.1.6 General eligibility for European Social Fund participants is set out in the ESF Operational Programme for England and supporting Guidance, from the European Social Fund Division of the Department for Works and Pensions which can be found on <http://www.dwp.gov.uk/esf>. Learners must meet the eligibility criteria defined in the Operational Programme as well as the specific eligibility criteria set out in the Agreement.
- 10.2 The Body will comply with written requests by the Chief Executive to display the 2007/13 European Social Fund logos and emblems on any materials relating to funding by the ESF. The Chief Executive will make available to the Body all relevant 2007/13 European Social Fund logos and emblems.
- 10.3 The Body must ensure that where it is agreed with the Chief Executive that the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is part funded by the European Union through the European Social Fund".
- 10.4 The Body must ensure that all learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Agreement.
- 10.5 The Body must ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is co-financed by the Skills Funding Agency".

11 Data Collection

- 11.1 The Body must supply to the Data Service, who collects this information on behalf of the Chief Executive, data on each individual learner, in accordance with the data collections framework set out in the '*Individualised Learner Record (ILR) Specification 2012/13* as amended and updated which is published on the *information authority's* website (www.theia.org.uk) in accordance with the '*Provider Support Manual*' as amended and updated.
- 11.2 The Body must supply the Chief Executive with data in accordance with the following:
- 11.2.1 in line with agreed audit arrangements;
- 11.2.2 in adherence with the data protection act;

- 11.2.3 to support payments received on profile;
 - 11.2.4 to enable reconciliation to take place; and
 - 11.2.5 to support the contract management and allocation processes.
- 11.3 The Body shall transmit data for each part of the Provision specified in Appendix 1 to the Chief Executive in one of the following ways:
- 11.3.1 to the Online Data Collection (OLDC) in a batch file specified by the Information Authority or
 - 11.3.2 to Provider on-line (POL) using the provider online system specified by the Information Authority
- 11.4 The Body must agree with the Chief Executive the data transmission method to be used for each part of the Provision. The Body will not change from one method to another unless agreed in writing by the Chief Executive. The Chief Executive reserves the right to require the Body to move to another form of data transmission.
- 11.5 Data collected must be transmitted to the Chief Executive through the Skills Funding Agency's web portal <http://providers.lsc.gov.uk>. Access to this web portal is restricted and the Body agrees to comply with the conditions of use regarding the supply of data to the Chief Executive set out in 'Individualised Learner Record (ILR) Specification for 2012/13 and relevant *Provider Support Manual as amended and updated* available on the *information authority's* web site www.theia.org.uk
- 11.6 In circumstances where no data has been added or updated for a given collection period the Body must inform the Chief Executive of a 'Nil Return' through the web portal.
- 11.7 The Body must ensure that data is received by the Chief Executive in accordance with the requirements of the 'Individualised Learner Record (ILR) specification for 2011/12 and 'Provider Support Manual 2011/12' as amended and updated.
- 11.8 Where the Chief Executive is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Body, the Chief Executive may require the Body to supply data more frequently for such period as the Chief Executive shall require.
- 11.9 The Chief Executive reserves the right to require the Body, at its own cost, to carry out such work as the Chief Executive deems necessary to improve the quality of data.

- 11.10 The Chief Executive reserves the right to require the Body to:
- 11.10.1 review the management reports provided by either the Body Internal Auditors or by the Chief Executive's Funding Auditors about the quality and reliability of the Body's MIS and ILR data;
 - 11.10.2 commission either the Body's Internal Auditors or the Chief Executive's Funding Auditors to evaluate and support the Body's actions and action plan to address any data quality issues that have been identified in the resulting management letters; and
 - 11.10.3 secure confirmation from the Body that it has been informed of any concerns and secure their commitment to overseeing the timely and accurate return of data in future
- 11.11 The Chief Executive reserves the right to suspend payments to the Body under the Agreement where data quality gives rise to concern about the accuracy of the data provided by the Body.
- 11.12 Failure to transmit complete and accurate data to the Chief Executive in accordance with Clause 11.7 above may result in funding being withheld or recovered.
- 11.13 The Body must update the course information funded by the Chief Executive at www.coursedirectoryproviderportal.org.uk in accordance with the course directory data requirements which can be found at <http://www.coursedirectoryproviderportal.org.uk/datarequirements>.
- 11.14 Where the Body is delivering the Provision to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Body. Failure to transmit complete and accurate data under this clause 11.14 will constitute a breach of the conditions of funding set out in this Agreement and may result in payments for this Provision to be delayed or withheld.

12 Data Protection and Protection of Personal Data

- 12.1 The Body shall ensure that information acquired by the Body and its sub-contractors under the delivery of this funding agreement will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of

confidentiality which may be owed to the other party. The clause shall not affect the Chief Executive's ability to make a search with a credit reference agency.

12.2 With respect to the parties' rights and obligations under this Agreement the parties agree that the Chief Executive is the Data Controller and the Body is the Data Processor within the meaning of the Data Protection Act.

12.3 The Body shall:

12.3.1 Process Personal Data only in accordance with the instructions from the Chief Executive (which may be specific instructions or instructions of a general nature as set out in the Agreement or otherwise notified by the Chief Executive to the Body during the term of the Agreement);

12.3.2 Process the Personal Data only to the extent and in such manner as is necessary for the delivery of the Provision or as is required by Law or any Regulatory Body;

12.3.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

12.3.4 Take reasonable steps to ensure the reliability of any contractor personnel who have access to the Personal Data;

12.3.5 Obtain prior written consent from the Chief Executive in order to transfer the Personal Data to any sub-contractors or other third parties for the delivery of the Provision;

12.3.6 Ensure that all Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Chief Executive;

12.3.7 Notify the Chief Executive within 5 working days if it receives:

12.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or

12.3.7.2 a complaint or request relating to the Chief Executive's obligations under the Data Protection Legislation;

- 12.3.8 Provide the Chief Executive with full co-operation and assistance in relation to any complaint or request made, including by:
- 12.3.8.1 providing the Chief Executive with full details of the complaint or request;
 - 12.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Chief Executive's instructions;
 - 12.3.8.3 providing the Chief Executive with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Chief Executive); and
 - 12.3.8.4 providing the Chief Executive with any information requested by the Chief Executive;
- 12.3.9 Permit the Chief Executive or the Chief Executive's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Body's data processing activities (and/or those of its agents, subsidiaries, and Sub-contractors) and comply with all reasonable requests or directions by the Chief Executive to enable the Chief Executive to verify and/ or procure that the Body is in full compliance with its obligations under this Agreement;
- 12.3.10 Provide a written description of the technical and organisational methods employed by the Body for processing Personal Data (within the timescales required by the Chief Executive); and
- 12.3.11 not Process Personal Data outside the European Economic Area without the prior written consent of the Chief Executive and, where the Chief Executive consents to a transfer, to comply with:
- 12.3.11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - 12.3.11.2 any reasonable instructions notified to it by the Chief Executive.

- 12.4 Where the Body is delivering the Provision to learners claiming out of work benefits, the Secretary of State with responsibility for unemployment is the Data Controller in relation to Personal Data which the Body is required to provide to the Secretary of State under any enactment. This Clause 12.4 will be enforceable by the appropriate Secretary of State in relation to any Personal Data processed by the Body on their behalf. Failure to transmit complete and accurate data under this Clause 12.4 will constitute a breach of the conditions of funding set out in this Agreement and may result in payments for this Provision to be delayed or withheld.
- 12.5 Where the Body is providing the Provision to learners who are subject to active management by the Offender Manager in respect of an order or licence, the Secretary of State for Justice (or their successor) is the Data Controller in relation to Personal Data which the Body is required to provide to the Secretary of State for Justice.

13 Branding and Logos

- 13.1 The Body when receiving funding from the Chief Executive shall comply with the requirements of the endorsement identity, available on the Skills Funding Agency identity guidelines website at <https://brand.skillsfundingagency.bis.gov.uk/>; on all and any promotional materials or activities in relation to the services. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 13.2 The Body shall be given access to the current Skills Funding Agency logos and statements, which it is required to use. The Body will be required to use logos and statements in accordance with the terms of use and should not alter or amend such logos or statements. Logos and statements are only to be used in relation to the provision under this Agreement. Any breach of this clause 13 or the requirements or terms of use of which the Body is made aware are a condition of funding, failure to comply could result in the funding being withdrawn.
- 13.3 The Body may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.
- 13.4 The Body must ensure all the terms of clause 13 are applied to the Body's sub-contractors in carrying out its responsibilities under this Agreement.

14 Feedback and Complaints

- 14.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Provision shall rest

with the Body. The Body shall have procedures in place, which are acceptable to the Chief Executive, to gather and act upon feedback and complaints from learners and/or their representatives and employers and the wider community.

- 14.2 The Chief Executive may issue guidance for the Body on dealing with feedback and handling complaints, and will set out the minimum standards expected.
- 14.3 The Body shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the Chief Executive.
- 14.4 Where a complaint has not been resolved to the satisfaction of the complainant the Body will advise the complainant of his or her right to complain to the Chief Executive and co-operate with any investigation carried out by the Chief Executive or their representatives.

15 Retention of Documents

- 15.1 The Body and its sub-contractors shall maintain original invoices; management information returns and all other documents necessary to verify the Provision delivered by itself or by its sub-contractors in relation to this Agreement for 6 years from the end of the financial year in which the last payment is made using monies from the European Social Fund, or where any payments made under this Agreement for the Provision have been used as match-funding for a European Social Fund Co-Financing Project, the Body will be required to retain documents until 31 December 2022.

16 Access and Monitoring

- 16.1 The Chief Executive shall give the Body reasonable advance notice in writing of proposed visits to the Body or its sub-contractors, to observe the delivery of the Provision, by any person who has taken or will take no direct part in the delivery or content of the Provision.
- 16.2 For monitoring and evaluation purposes, the Chief Executive, the Secretary of State and their agents, Department for Business Innovation and Skills the Department for Work and Pensions (or their Successors), the National Audit Office, Representatives of the European Commission and the European Court of Auditors, the Audit Commission and the Inspectorate shall have the right to visit all or any site(s) and view operations relating to the Provision and to inspect relevant documents and interview learners and the Body's staff during these visits.

- 16.3 The Body shall, and shall ensure that its sub-contractors shall, permit access at any reasonable time to any of the representatives listed at Clause 16.2 in order to:
- 16.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the Body and its sub-contractors that relate to the Agreement;
 - 16.3.2 visit, view or assess the design, management and delivery of the Provision at any Premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with learners, during these visits at any reasonable time;
 - 16.3.3 carry out examinations into the economy, efficiency and effectiveness with which the Body has used the Chief Executive's resources in the delivery of the Provision.
- 16.4 Where reasonably required, the Body and its sub-contractors shall provide copies of any relevant documents required by any of the representatives listed at Clause 16.2.
- 16.5 The Body shall, if required by any of the representatives stated at Clause 16.2 provide appropriate oral or written explanations.
- 16.6 The Chief Executive reserves the right, at any reasonable time, and as it may deem necessary to require the Body at its own cost to:
- 16.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to deliver the Provision;
 - 16.6.2 obtain a report by an independent accountant of the Chief Executive's choice on the financial systems and controls operated by the Body or the accuracy of funding claims in respect of payments claimed or received under the Agreement. The report and the work required in order to produce the report shall be carried out to the satisfaction of the Chief Executive, and he must be able to place reliance on it. The Body must agree the instructions for the work with the Chief Executive and the Body shall provide a copy of the interim and final report to the Chief Executive as soon as they are available;
 - 16.6.3 provide a copy of the Body's latest audited Accounts;
 - 16.6.4 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Chief Executive.

16.7 The Body shall in delivering the Provision comply fully with all relevant rules and regulations of the Chief Executive in force from time to time especially when on Chief Executive's premises.

17 Review of Performance and Reconciliation of Funding

17.1 Where the Body receives profile payments from the Chief Executive, payments will be reconciled to cash earned by actual delivery of the Provision or the period to the timetable published in the Funding Requirements.

17.2 Where the Body's actual delivery will result or has already resulted in an overpayment to the Body by the Chief Executive, the Chief Executive will either:

17.2.1 withhold future payments or;

17.2.2 raise an invoice for the amount or;

17.2.3 deduct the amount owed from, payments due to the Body under the Agreement for current or subsequent months or years accordingly.

17.3 Where the Body's actual delivery has resulted in an underpayment to the Body by the Chief Executive, the Chief Executive will adjust the amount due to the Body accordingly. This adjustment shall not exceed the overall maximum value set out in Appendix 1.

17.4 Should there be an under or over payment to the Body, the Chief Executive may, at its absolute discretion require a variation to the profile payments.

17.5 A review will take place at the end of the term of this Agreement in respect of the delivery of the Provision. The Chief Executive will notify the Body of the actual amount of money, which has been earned against the Provision delivered and compare this to the total profile payments made and to the overall maximum value specified in Appendix 1. At this stage final cash reconciliation will take place. Any overpayment made to the Body by the Chief Executive will be repayable within 30 days of receiving an invoice. The Chief Executive reserves the right to reduce future payments to recover any overpayments. The Chief Executive will pay any outstanding monies owed, up to the overall maximum value specified in Appendix 1 of this agreement, within 30 days of final reconciliation being completed. Payment will be made via BACS.

18 Freedom of Information and Confidentiality

18.1 Definitions

"Exempt Information" means any information or class of information (including but not limited to any document,

report, contract or other material containing information) relating to this Agreement or otherwise relating to the Body, which potentially falls within an exemption to FOIA (as set out therein).

“FOIA” means the Freedom of Information Act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in clause 18; and

“FOIA notice” means a decision notice, enforcement notice and/or an information notice.

18.2 Freedom of Information

18.2.1 The Body acknowledges and agrees that the Chief Executive is subject to legal duties under FOIA, which may require the Chief Executive to disclose on request information relating to this Agreement or otherwise relating to the Body;

18.2.2 The Body acknowledges and agrees that the Chief Executive is required by law to consider each and every request made under FOIA for information;

18.2.3 The Body acknowledges and agrees that all decisions made by the Chief Executive pursuant to a request under FOIA is solely a matter for and at the discretion of the Chief Executive;

18.2.4 Notwithstanding anything in this Agreement to the contrary (including without limitation any obligations of confidentiality), the Chief Executive shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is exempt information the Chief Executive shall use reasonable endeavours (but shall not be obliged) to consult the Body and shall not:

- a) confirm or deny that information is held by the Chief Executive; or
- b) disclose information requested.

to the extent that in the Chief Executive's opinion the information is eligible in the circumstances for an exemption and therefore the Chief Executive may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause.

18.2.5 In relation to information relating to the Body or this Agreement which the Body requests should be exempt under the FOIA the Body shall indemnify the Chief Executive for any and all costs (including legal fees) incurred by the Chief Executive in:

- a) assessing the application of any exemption under FOIA; and/or
- b) responding to any FOIA notice; and/or
- c) lodging any appeal against a decision of the information commissioner in relation to disclosure.

where such costs are incurred pursuant to efforts by the Chief Executive to withhold exempt information;

18.2.6 The Chief Executive shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any exempt information or other information whether relating to this Agreement or otherwise relating to the Body;

18.2.7 The Body shall assist the Chief Executive as reasonably necessary to enable the Chief Executive to comply with its obligations under FOIA.

19 Confidentiality

The Body hereby warrants that:

19.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall treat all Confidential Information belonging to the Chief Executive as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Agreement; and

19.2 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the Chief Executive, except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

19.3 it shall take all necessary precautions to ensure that all Confidential Information obtained from the Chief Executive is treated as confidential and not disclosed (without prior approval)

or used other than for the purposes of this Agreement by any of its employees, servants, agents or sub-contractors.

- 19.4 The provisions of clauses 19.1 and 19.2 shall not apply to any information:
- 19.4.1 which is or becomes public knowledge (other than by breach of this Clause 19.4.1);
 - 19.4.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
 - 19.4.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
- 19.5 Nothing in this Clause 19 shall be deemed or construed to prevent the Chief Executive from disclosing any Confidential Information obtained from the Body:
- 19.5.1 to any other Government Department, Non-Departmental or quasi Government the Body or agency, central or local;
 - 19.5.2 to any consultant, contractor or other person engaged by the Chief Executive directly in connection with this Agreement, provided that such information is treated as confidential by the receiving consultant, contractor or any other person.
- 19.6 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the delivery of the Provision, the Body undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 19.7 The Body will immediately notify the Chief Executive of any breach of security in relation to Confidential Information and all data obtained in the course of the delivery of the Provision and will keep a record of such breaches. The Body will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Body will co-operate with the Chief Executive in any investigation that the Chief Executive considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 19.8 The Body shall, at its own expense, alter any security systems at any time during the period of the Agreement at the Chief Executive's request

if the Chief Executive reasonably believes the Contractor has failed to comply with clause 19.7.

19.9 The Chief Executive reserves the right to publish details of this Agreement and the payments made under it to comply with the Government's transparency requirements

19.10 The provisions of this Clause 19 will apply for the duration of the Agreement and after its termination.

WITHDRAWN

20 State Aid

- 20.1 The Body should satisfy themselves, if the European rules on State Aid apply to the Provision delivered under this Agreement.
- 20.2 Where the rules on State Aid apply, the Chief Executive will supply to the Body details of the records that the Body will need to collect and retain.
- 20.3 The Chief Executive reserves the right to require the Body to obtain a contribution towards the cost of the Provision delivered under this Agreement from the employer of any participant. Where a contribution is required, the Chief Executive will confirm to the Body in writing the exact percentage of the contribution.
- 20.4 Where Chief Executive requires the Body to obtain a contribution towards the cost of the Provision under clause 20.3 of this Agreement, the Body must provide evidence that the contribution has been received.
- 20.5 In the event that any funding paid under this Agreement is deemed to constitute unlawful state aid the Chief Executive reserves the right to require immediate repayment of any such funding.

21 The Agreement

- 21.1 This Agreement constitutes the entire agreement between the parties and shall not be varied except by an instrument in writing signed by the parties.

Authorised Signatory for and on behalf of the Body

.....
Signature Position

Name (Print).....

Date:.....

Authorised Signatory with the delegated authority on behalf of the Chief Executive of Skills Funding

.....
Signature Position

Name (Print).....

Date:

WITHDRAWN

APPENDIX 1 – SUMMARY OF PROGRAMME FUNDING (CDS team to add)

WITHDRAWN

Appendix 2- Supporting Documentation - Funding Agreements [to be inserted by the CDS Team if appropriate]

Conditions of Funding (Grant) – 12/13

Version 1 May 2012

Contract Reference

FUNDING APPENDIX – CDS to add as appropriate

WITHDRAWN

Skills Funding Agency
Cheylesmore House
Quinton Road
Coventry CV1 2WT
T 0845 377 5000
F 024 7682 3675
www.bis.gov.uk/skillsfundingagency

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